Spector Freight System, Inc., Viking Division *and* International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Teamsters' Steel Haulers Local Union No. 800. Case 6-CA-13105

February 10, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On March 19, 1981, Administrative Law Judge Thomas R. Wilks issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge only to the extent consistent herewith.

The Administrative Law Judge found that Respondent violated Section 8(a)(5) and (1) of the Act by dealing directly with employees and unilaterally implementing changed terms and conditions of employment with respect to the lease of trailers in contravention of the terms of the National Master Freight Agreement (NMFA). We find merit in Respondent's exceptions to these findings.

Respondent is a common carrier engaged, *inter alia*, in the interstate hauling of iron and steel and is bound by the terms of the NMFA and its supplements. It has been Respondent's practice to employ owner-operators,[2] fleet drivers,[3] and company drivers,[4] all of whom are covered by the NMFA. The NMFA provides that owner-operators are to be paid rental at the rate of 33 percent of gross revenue for use of a tractor and 13 percent of gross revenue for use of a trailer.

In 1979, Respondent experienced an increase in costs. At the same time, it had many of its own trailers sitting idle while it paid its owner-operators for the use of their trailers. Respondent concluded that it could operate its own trailers for less than the 13-percent rental provided in the NMFA. Accordingly, in November and December 1979, Respondent canceled 30 trailer leases, including 4 involving owner-operators who were members of the Charging Party, Local 800. Those drivers whose trailer leases were canceled were offered the opportunity to pull company trailers, utilizing their own tractors, which remained under lease to Respondent. On December 17, 1979, Respondent held a meeting with its drivers at which it explained the reasons for the lease cancellations and informed the drivers that further cancellations would probably be necessary.

In May 1980, Respondent canceled 19 trailer leases, including 6 with owner-operators represented by Local 800.[5] Thereafter, Respondent was contacted by several employees whose leases had been canceled. Those employees inquired whether Respondent would enter into new trailer leases providing for rental at 10 percent of gross revenue rather than the 13 percent provided for in the NMFA. Respondent instructed the employees to contact their union representative and declined to discuss the matter with them individually. Thereafter, Respondent was contacted by Richard Wallace, business agent for Local 800. The Administrative Law Judge credited Wallace's testimony that he informed Respondent that the proposed leases were in violation of the contract and that he would take steps to police the contract, but that he would not prevent employees from signing the leases "under protest."

Thereafter, Respondent entered into new leases with the six owner-operators whose leases were canceled in May 1980, as well as with one owner-operator whose lease was canceled in November 1979 and who had thereafter utilized a trailer owned by Respondent. Other than providing for 10-percent rental, the new leases contained the same provisions as the recently canceled leases.

The Administrative Law Judge found that the designated bargaining agent was neither the Local Union nor the Teamsters International. Rather, he found that the local unions jointly constituted the bargaining agent and that the locals, in practice, authorized the Teamsters National Freight Industry Negotiating Committee (the Committee) to act as

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] Owner-operators lease equipment to Respondent under the terms of the NMFA and operate that equipment. In addition to the equipment rentals, they receive as compensation for their driving services 26 percent of gross revenue as wages, 3 percent as compensation for various types of leave, and fringe benefits as specified in the NMFA.

[3] Fleet drivers operate equipment owned by others and leased to Respondent.

[4] Company drivers operate equipment owned by Respondent.

[5] The Administrative Law Judge found that Respondent did not violate Sec. 8(a)(5) by canceling trailer leases in May 1980. Without deciding whether Respondent was obligated to bargain over the lease cancellations, he found that Local 800 waived its opportunity to bargain over them. In the absence of exceptions thereto, we adopt this finding *pro forma*.

their agent in negotiations. He therefore found that the local business agent had neither real nor apparent authority to negotiate modifications of the NMFA. He also found no evidence that the bargaining agent had acquiesced in any actions by Wallace which might be construed as negotiation and agreement concerning modifications of the trailer leases. He further found that, even if Wallace had authority to negotiate such a change, no agreement was reached. Rather, he found that Wallace merely indicated that the Local would not forbid its members to enter into leases at a reduced rental but that at all times the Local protested the proposed change and sought compliance with the contract terms.

We conclude that the General Counsel has not established by a preponderance of the evidence that Respondent violated the Act in the manner alleged in the complaint. The complaint alleged, and the Administrative Law Judge found, that the "affiliated local unions" of the Teamsters constituted the designated collective-bargaining representative. In order to make out a *prima facie* showing that Respondent violated Section 8(a)(5) by its change in trailer leases, the General Counsel was required to show that Respondent failed to bargain and reach agreement *with the designated bargaining representative* before implementing changes in the terms and conditions of the contract. Similarly, an element of direct dealing with employees is the lack of consent *by the designated bargaining representative* to the contacts made with employees—in this case, the signing of new leases containing terms which differ from those required by the NMFA. We agree with the Administrative Law Judge's finding that the Committee, rather than Local 800, was the agent for purposes of negotiations. However, the General Counsel introduced no evidence concerning whether Respondent bargained with the Committee over the proposed lease changes or sought the Committee's approval of the new leases. Instead, the General Counsel introduced evidence only tending to show that Respondent did not reach agreement with Wallace, the business agent for Local 800, as to these matters. As the General Counsel has not shown that Respondent failed to bargain with the designated bargaining agent—the affiliated Teamsters local unions jointly and/or their designated agent for purposes of bargaining, the Committee—before instituting the changes, we find that he has not met his burden of proof with respect to the violations alleged. Accordingly, we shall dismiss the complaint.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint herein be, and it hereby is, dismissed in its entirety.

DECISION

STATEMENT OF THE CASE

THOMAS R. WILKS, Administrative Law Judge: This case was heard by me in Pittsburgh, Pennsylvania, on September 30, 1980, pursuant to unfair labor practice charges, and amended charges filed by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Teamsters' Steel Haulers Local Union No. 800 (herein called Local 800) on February 1 and April 22, 1980; complaint issued by the Regional Director for Region 6 on April 28, 1980, and an amended complaint issued on September 3, 1980. The complaint alleges in essence that Spector Freight System, Inc., Viking Division (herein called the Respondent) violated Section 8(a)(5) and (1) of the Act by engaging in direct dealing with employees and bypassing their exclusive bargaining agent, and by unilaterally implementing changes in conditions of employment. More particularly, the Employer is alleged to have changed the conditions of employment of its employee owner-operators with respect to compensation for equipment owned by its owner-operator and leased to the Respondent.

The Respondent's answer denies the commission of any unfair labor practices, and as amended at the hearing, avers that the Board should defer the issues herein to the grievance procedure set forth in a collective-bargaining agreement to which it and the local unions are a party. All parties were afforded full opportunity to participate, to present evidence, to argue orally, and to file briefs.

Upon the entire record in this case, including my observation of the demeanor of witnesses, and in consideration of the briefs, I make the following:[1]

FINDINGS OF FACT

1. BUSINESS OF THE RESPONDENT

The Respondent, a corporation with facilities located in various States throughout the United States, including facilities located in Irwin and Johnstown, Pennsylvania, has been engaged as a common carrier in the intrastate and interstate transportation of freight and steel commodities. During the 12-month period ending March 31, 1980, the Respondent derived from these operations gross revenues in excess of $50,000 for the transportation of freight and steel commodities from within Pennsylvania directly to points outside of that Commonwealth.

[1] Hearings involving similar alleged violations were conducted on September 29 and 30 and October 1, 1980, involving *Jones Motor Co., Inc.*, Cases 6-CA-13101 and 6-CA-13343 and *Branch Motor Express Company*, Case 6-CA-13102.

It is admitted, and I find, that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION

It is admitted, and I find, that Local 800 is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Background*

The Respondent is a common carrier engaged, *inter alia*, in the interstate hauling of iron and steel, and operates terminals at Irwin and Johnstown in western Pennsylvania where there are employed owner-operators; i.e., persons who drive self-owned equipment. The status of owner-operators as employees within the meaning of the Act is conceded and is not an issue herein.

Local 800 commenced its existence in 1971 for the purpose of representing owner-operators, company drivers, and fleet drivers engaged in the transportation of iron, steel, and special commodities in the western Pennsylvania area. Owner-operators and fleet drivers who are members of Local 800 are employed at the Respondent's Irwin and Johnstown terminals.

As a longstanding practice in the trucking industry dating back to the mid-1960's, multiemployer and multiunion bargaining has resulted in the negotiation of the National Master Freight Agreement (herein called the NMFA), and approximately 32 area supplements including the Eastern Conference Area Iron & Steel Rider. The most recent NMFA is effective from April 1, 1979, to March 31, 1982. Eastern Motor Carrier Employers Conference, Inc., is an organization composed of a number of employers, and exists for the purpose, *inter alia*, of representing its employer-members in negotiating and administering, together with other employer-associations, the NMFA and various supplements thereto, with the Teamsters National Freight Industry Negotiating Committee (herein called the National Committee), representing various labor organizations including Local 800 under what has been characterized as a "power of attorney." The Respondent is a member of Eastern Motor Carrier Employers Conference, Inc., and has authorized it to represent it in collective bargaining with the National Committee. The Respondent is bound by the resulting NMFA and its supplements, including the Eastern Conference Area Iron & Steel Rider.

The appropriate unit herein is that group of employees covered in the multiemployer bargaining as set forth in articles 2 and 3 of the NMFA employed by the employer members of the multiemployer bargaining groups as well as those employees of the Respondent. The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is divided into four geographical jurisdictions including, *inter alia*, the Eastern Conference of Teamsters which in turn is composed of local unions in the eastern United States. The Eastern Conference of Teamsters is subdivided into groups of various local unions in certain geographical areas including a group known as Joint Council No. 40. The National Committee consists of representatives appointed by the International Union's general president on recommendation of the area conference director. With respect to the negotiation of the NMFA and its supplements, the National Committee divides itself into subcommittees which then engage in simultaneous negotiations. The National Committee's principal subcommittee negotiates articles 1 through 39 of the NMFA. The articles of the NMFA commencing with article 40 are negotiated by area subcommittees. Those final articles, i.e., herein the Eastern Conference Iron & Steel Rider, are limited in application to geographic region, and the nature of operations covered (iron and steel products). The iron and steel rider is supplemental to the National Master Freight Agreement. The parties to the NMFA are the various employer-associations and members or employers bound thereunder, including the Respondent and the local unions; including Local 800 and the National Committee. As alleged in the complaint and as admitted by the Respondent's answer, at all times material herein, the local unions affiliated with the International Union, including Local 800, have been, and are now together, the exclusive collective-bargaining representative of the employees in the multiemployer unit described above, and have been recognized as such by the Respondent pursuant to the aforedescribed collective-bargaining agreements.[2]

The NMFA and Eastern Conference Area Iron & Steel Rider are explicitly self-described in article 1, and elsewhere, as products of multiemployer/multiunion bargaining. Article 2, section 4, stresses a single bargaining unit and a single contract. Article 6, section 2, prohibits an employer from entering "into any agreement or contract with his employees individually or collectively, which in any way conflicts with the terms and provisions of this Agreement." Article 31 again refers to the multiemployer, multiunion nature of the bargaining unit and obliges the parties "to participate in joint negotiations of any modification or renewal" of the NMFA and its supplements.

Article 2, section 5, of the NMFA refers to continuation of riders providing for better wages, hours, and working conditions negotiated by the local unions and affected employers. "Improvement" riders are required to be submitted to a conference joint area committee for approval. It states:

> No new Riders to this agreement shall be negotiated unless approved by the Conference Joint Area Committee, if confined to that Conference Area, or by the National Grievance Committee if applicable to more than one Conference Area.

It further treats preexisting riders that fail to meet the standards set forth in the NMFA and supplements and

[2] For a description and discussion of the background concerning the multiemployer/multiunion bargaining of the NMFA see *Brotherhood of Teamsters and Auto Truck Drivers Local No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Granny Goose Foods)*, 195 NLRB 454 (1972); *Brotherhood of Teamsters and Auto Truck Drivers Local No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Granny Goose Foods, Inc.)*, 214 NLRB 902 (1974); *Charles H. Davey et al. v. Frank E. Fitzsimmons et al.*, 413 F.Supp. 670 (D.C.D.C. 1976).

provides for negotiation of those riders and approval of them by contractual procedures.

Article 6, section 1, "Maintenance of Standards" provides for the continuation by the employers of all conditions of employment relating to wages, hours, etc., at not less than the same standards in effect at the time of the signing of the agreement. It provides, however, that the terms of this section do not apply to an employer who has applied the terms of the agreement through inadvertence or error, and states that an employer who has done so may seek relief in writing from the appropriate conference joint area committee. It further provides that "any disagreement between the local union and the Employer with respect to this matter shall be subject to the grievance procedure."

Article 61, section 7, "Competitive Review Board" states:

> The Employer Negotiating Committee, together with the Union Negotiating Committee shall designate a "Joint Competitive Review Committee" which shall meet at the request of either side for the purpose of reviewing and, if necessary adjusting by mutual agreement wage rates or practices which, because of competitive circumstances, have resulted or may result in a diversion of business and a consequent loss of jobs to other means of transportation.
>
> Nothing herein contained shall be construed to permit the Committee to review or adjust tariffs or other charges made by Employers hereto or to adjust or to interfere with competitive practices among Employers who are parties hereto or others.

Article 22 relates to the terms and conditions of employment of owner-operators. Nothing in the NMFA or supplements requires an employer to lease equipment from a driver. However, article 22, section 4, provides that "the performance of unit work by owner-operators should be governed by the provisions of this Agreement and supplements relating to owner operators." It makes explicit references to leases of equipment by the owner-operator and requires in section 12 that a copy thereof be filed with the "Joint Area Committees" and that the minimum rates are to be set forth in the area supplement. Section 18 states:

> It is further agreed that the Employer or certificated or permitted carrier will not devise or put into operation any scheme, whether herein enumerated or not, to defeat the terms of the Agreement, wherein the provisions as to compensation for services of and for use of equipment owned by owner-operator shall be lessened, nor shall any owner-operator lease be cancelled for the purpose of depriving employees of employment, and any such complaint that should arise pertaining to such cancellation of lease or violation under this Section shall be subject to the discharge and grievance provisions of the Area Supplement.

Article 55, contained in the Eastern Conference Area Iron & Steel Rider deals further with the terms and conditions of employment of the owner-operators. Reference therein is made to the lease of equipment from the owner-operator to the employer, and to a minimum lease duration of 30 days. Section 12 requires the filing of copies of such leases with the "Joint State Committees," and that leases must be in accord "with the minimum rates and conditions herein, plus the full wage rate and supplementary allowances for drivers as embodied elsewhere in this agreement." (The minimum rates for rental are set forth in art. 61.) Section 15 provides for the nullification of contrary agreements extant at the agreement's execution. Section 18 states:

> It is further agreed that the Employer or certificated or permitted carrier will not devise or put into operation any scheme, whether herein enumerated or not, to defeat the terms of the Agreement, wherein the provisions as to compensation for services on and for use of equipment owned by owner-operator shall be lessened, nor shall any owner-operator's lease be canceled for the purpose of depriving employees of employment and any such complaint that should arise pertaining to such cancellation of lease or violation under this section shall be subject to Article 44, except for clear violation by the owner-operator of the Lease Agreement.[3]

Section 20 provides:

> All leases, agreements or arrangements between carriers and owner-operators shall contain the following statement:
>
> The equipment which is the subject of this lease shall be driven by an employee of the lesee. If the lessor is hired as an employee to drive such equipment, he shall receive as rental compensation for the use of such equipment no less than the minimum rental rates, allowance and conditions (or the equivalent thereof as approved by the Joint Area Committee) established by the current Eastern Conference Area Iron and Steel Rider for this type of equipment and, in addition thereto, the full wage rate and supplementary allowances for drivers (or the equivalent thereof as approved by the Joint Area Committee).
>
> The lessee expressly reserves the right to control the manner, means and details of and by which the driver of such leased equipment performs his services, as well as the ends to be accomplished.
>
> To the extent that any provision of this lease may conflict with the provisions of the Eastern Conference Area Iron and Steel Rider as it applies to equipment driven by the owner, such provision of this lease shall be null and void and the provisions of such Rider shall prevail.
>
> All Employers, by virtue of signing this Agreement, do hereby agree to sign the uniform lease approved by the Union. It is understood that this Agreement supercedes all other leases and agreements where a lease has not been approved by the Committee.

[3] Art. 44 refers to the grievance procedure.

A comprehensive grievance procedure for the resolution of all grievances or questions of interpretation arising under the NMFA and its supplements is set forth in articles 8, 44, and 45, which provides for ascending stages of joint employer-union bipartite committees consisting of equal numbers of representatives of both parties; i.e., joint local committee; joint area committee; the eastern conference joint area committee; and finally the national grievance committee. A decision at any step of these proceedings is final and binding. The grievance proceeds to the next or higher level when the committee, then hearing the matter, fails to come to an agreement; i.e., when they become deadlocked. Article 45, section 1, mandates that "no strike, lockout, tie up or legal proceedings" may be resorted to by the parties without first exhausting the contractual grievance procedures. Article 8 provides the national grievance committee with the authority to refer to "arbitration" pursuant to majority vote, cases involving discharges or suspensions which are deadlocked. Other disputes are decided upon majority vote of the national committee and, if deadlocked, the parties are then free to resort to economic or other self-help.

Events Leading to the Reduction in Trailer Rental

A large number of the Respondent's employees are owner-operators who lease equipment to the Respondent. Those leases in effect prior to November 1979 set forth a combined tractor-trailer rental payment to the owner-operator of 46 percent of gross revenue, of which 33 percent is for use of the tractor and 13 percent for use of a trailer. The leases provided for termination upon timely notice by the Respondent or driver.

The Respondent has engaged in the practice of leasing trailers from its owner-operators since the inception of the special products division in 1961. Shortly after the effective date of the most recently negotiated collective-bargaining agreement, the Respondent experienced a 3.4-percent increase in costs due to various factors including, *inter alia*, an increase in contractual fringe benefit costs during a period of economic adversity. By November 1979, the Respondent had a large number of its own trailers, as many as 70 at one time, that were then idle, and it concluded that since it was substantially less costly to operate its own trailers than to lease them, one way to cut costs was to cancel the trailer leases of the lesser productive owner-operators while providing its own trailers to be hauled by trucks owned by those owner-operators.

Without notice to Local 800, the Respondent on or about November 14, 1979, commenced the cancellation of the vehicle leases of owner-operators who it determined were the lowest in productivity. As of December 17, 1979, approximately, 30 trailer leases of owner-operators were canceled by the Respondent throughout its entire system of 571 owner-operators and fleet drivers. Of those 30 owner-operators, 4 were members of Local 800. Each of those four was provided the opportunity to haul the Respondent's trailers under a tractor-only lease. Three of those four drivers filed grievances protesting the cancellation of their trailer leases. All the grievances were denied at the western Pennsylvania joint area grievance committee level.

Pursuant to prior notice the Respondent on December 17, 1979, held a meeting at Hammond, Indiana, to which all its owner-operators were invited. No representatives of Local 800 were invited. About 125 drivers attended. The Respondent's vice president in charge of operations, Robert Dilley, conducted the meeting. The purpose of the meeting, according to Dilley, was to inform the drivers "as to what's going on. . . ." Dilley opened the meeting and explained the basis for the cancellation of trailer leases that had been effectuated; i.e., low productivity. Other matters such as safety were also discussed. Dilley informed the drivers that further lease cancellations would probably occur in the future based again on low productivity. Neither Dilley nor any driver raised the subject of an alternative course of action; e.g., a trailer lease of 10 percent instead of the 13-percent rate prescribed in the collective-bargaining agreement. According to Dilley, the drivers became boisterous and "rowdy," as attempts were made by them to discuss the pending grievances. However, it is his uncontradicted testimony that he refused to discuss those grievances at the meeting and that he also stated to the drivers that he would not then negotiate trailer leases.

No further equipment lease cancellations occurred until May 30, 1980, when 19 more owner-operator trailer lease cancellations were effectuated. Of those 19 owner-operators, 6 were members of Local 800: John J. Della, Edward A. Kissell, Donald Lohr, Donald Worfum, William Herbert, and Bernard Franks. The drivers were advised that their equipment leases were canceled "pursuant to paragraph 18 of the lease agreement." They were advised also that the Respondent would furnish a trailer to be hauled by the driver-owned tractor. The cancellation was to have been effective in 5 days, upon notification. Thus, at the Johnstown terminal of a total of 9 owner-operators the trailer leases of 2 were canceled, and at the Irwin terminal, of a total of 13 owner-operators the trailer leases of 4 were canceled in May 1980. The Johnstown terminal also included owner-operator Cosgrove whose trailer lease had been terminated in November and who had thereafter utilized the Respondent's trailer.

During the next several weeks following the May cancellations, Della, Kissell, Lohr, Worfum, Herbert, Franks, and Cosgrove entered into an amendment to their equipment leases whereby a trailer rental of 10 percent was provided. Thereafter, they utilized their own trailers at the reduced rental. The only factual dispute herein involves the events leading directly to the execution of these amendments to leases, i.e., whether they occurred pursuant to the agreement of Local 800.

Dilley testified that following the May lease cancellations all seven of the drivers individually approached him and asked whether the Respondent would consider entering into a trailer lease at the reduced rental of 10 percent. These employees told him that they had heard of similar arrangements with other employers in the industry. According to Dilley's direct testimony as an adverse witness, he responded to the drivers that at that

point in time in early June the Respondent had not entered into any agreements for 10 percent trailer leases but that in any event he was prohibited by law from discussing the matter with them because they were represented by a union and therefore they must contact their union representative. Dilley promised the drivers that he would respond to a contact from their union representative.

Thereafter, during the first week of June, Dilley was contacted by Local 800 Business Agent Richard Wallace. On direct examination, Dilley testified that they talked about the cancellation of trailer leases and the fact that throughout the industry there had been widespread trailer lease cancellations and resulting 10-percent trailer leases; and that he told Wallace ". . . don't forget you've already got the N.L.R.B. charge against me and we're talking about the 800 [sic] I'm not talking personally, but I can't be talking like this you know."[4] Dilley further testified that he told Wallace, despite the foregoing reticence, that the Respondent would accept a 10-percent trailer lease if Wallace would agree to it; and that Wallace responded that he would talk to the drivers, and that if any driver wanted a 10-percent lease he would require them to confirm it to Wallace in a written note.

On examination by the Respondent's counsel, Dilley's testimony changed somewhat. Dilley testified that his first contact with Wallace was precipitated by a telephone call from driver Lohr wherein Lohr asked Dilley if he would accept a 10-percent trailer lease. In that conversation, Dilley told Lohr that "some local unions are going along with the 10-percent trailer leases," but that he did not know Local 800's position and therefore he told Lohr to have Wallace contact him. Dilley further testified that thereafter when Wallace called they discussed the possibility of a 10-percent lease, and Dilley stated that: "[T]he industry as a whole seemed to be going that way, [and] a couple of locals I had previous conversations with agreed to the 10-percent trailer lease. . . ." According to Dilley, Wallace responded that if the drivers wanted to enter into a 10-percent lease he did not care, and they then agreed to "set up the deal" that Wallace would obtain that information from the drivers and convey it to Dilley; and that Wallace said when he called Dilley that he was satisfied and that Dilley should talk to the drivers. Accordingly, Dilley thereafter dealt individually with the drivers and entered into 10-percent leases with them.

The other locals with which Dilley testified that he had reached agreement prior to Wallace's call were Local 145 of Gary; Local 836 of Middletown; Local 135 of Indianapolis; and Local 124 of Detroit. He did not explain his inconsistent statement to the drivers that no such agreements were made. Dilley testified that thereafter the Local 800 drivers called and asked for the 10-percent lease and that it was their suggestion and desire; and that the Respondent would have been "just as happy" if they hauled the Respondent's trailer. Dilley testified that his understanding with Local 800 was achieved "all in one conversation."

Wallace testified that he had become aware of the May lease cancellations by letter from the Respondent, and that thereafter the drivers, including Lohr, called him and informed him that the Respondent would agree to allow them to continue the use of their own trailers at a 10-percent rental and that otherwise their employment was in jeopardy. According to Wallace, he responded that such arrangement was in violation of the contract and the Union intended to police the contract but if they wanted the 10 percent rental they should notify him in writing. Wallace testified that he was asked then to call Dilley. According to Wallace he immediately called Dilley after talking to Lohr and after each other similar call, and told Lohr that the driver was willing to accept a 10-percent trailer lease because of economic necessity.[5]

Wallace insisted that after Lohr's call and the other calls, he notified Dilley in several conversations that he considered the Respondent to be in violation of the collective-bargaining agreement and that Local 800 was "going to still pursue it," to which Dilley responded that Wallace should do what he had to do. On cross-examination, Wallace conceded that he engaged in conversation with Dilley with respect to each of the seven drivers. Wallace, however, testified with certitude that each time he spoke with Dilley he stated: "I told you prior to this we are policing the contract and that they [the Respondent] were in violation, [and] that the men will be signing [the 10 percent lease], and signing under protest."

Dilley was called to testify as a witness for the Respondent and was asked whether he could remember Wallace saying anything about signing 10 percent leases "under protest." Dilley's testimony in response was hesitant, confused, and marked by a lack of certitude. He testified that he did not recall the statement, and: "I don't think it happened, I can't remember him protesting."

Overall, I was more impressed with the demeanor of Wallace, who, although an emotional witness, was far more certain about this crucial conversation upon which Dilley premised subsequent dealings with employees at a time of pending unfair labor practice charges which alleged unlawful direct dealings with employees. I also conclude that it is unlikely that Wallace would have so readily granted Dilley permission to negotiate directly with the drivers in light of Local 800's pending charges. Furthermore, it is Wallace's uncontradicted testimony that he is possessed of no authority to agree to an equipment lease, the terms of which are at variance with the collective-bargaining agreement.

I credit the testimony of Wallace and conclude that Wallace informed Dilley that Local 800 did not agree to the modification of the collective-bargaining agreement with respect to the trailer rental, and that although the drivers would individually enter into a 10-percent trailer lease they were doing so because of economic necessity but under protest and without the sanction of Local 800.

[4] The first charge in this case was filed on February 1, 1980, by Local 800 President Robert J. Todd and alleges, *inter alia*, direct dealing with employees on or about January 18, 1980. An amended charge was filed on April 22, 1980, which alleges, *inter alia*, direct dealing with employees on or about December 17, 1979.

[5] Wallace characterized the driver's option as that of losing his job. However, it is clear that the option actually put to the driver was one of losing the trailer rental compensation entirely.

Other than the processing of the November grievances and the filing of the instant charges, Local 800 made no contact with the Respondent concerning lease cancellations prior to the early June telephone conversations. At no time did Local 800 make a demand on the Respondent to be notified of any post-November 1979 lease terminations nor did it make any demand to bargain about that subject. Wallace testified that in his conversations with the seven drivers he advised them that he considered the disposition of the November grievances to have set a precedent, and that there was nothing he could do about it. Wallace's concern, as expressed to Dilley then, was limited to the enforcement of the collective-bargaining agreement with respect to trailer rental. No grievances were filed subsequent to the May lease cancellations.

Conclusions

Issues Restated

The amended complaint alleges that the Respondent on December 17, 1979, by its agent Dilley, bypassed the Union and dealt directly with employees by soliciting them to agree to proposed changes with respect to equipment leases which had provisions different from the NMFA; and that on May 30, 1980, the Respondent unilaterally changed terms and conditions of employment by requiring employees to execute new trailer leases which incorporated such changed terms and conditions of employment. The complaint also alleges that on or about May 30, 1980, the Respondent terminated the employment of, or refused to schedule work for, those employees who had failed to execute new equipment leases.

The General Counsel argues that the collective-bargaining agreement sets forth in clear and unambiguous terms a minimum trailer rental which affects a basic condition of employment of the drivers. The General Counsel also argues that a blanket unilateral cancellation of leases which results in new leases containing reduced trailer rental is a matter that must be presented to the joint area committee under article 2, section 5, or article 61, section 7, of the NMFA, and that a carrier who fails to do so effectively modifies the NMFA in violation of Sections 8(a)(5) and 8(d) of the Act. Alternatively, the General Counsel argues that, if the aforedescribed lease cancellations are not amenable to those contractual processes, they nevertheless must be presented to each local union affected by the proposed change, and to the area steel haul negotiating subcommittees of the National Committee, and that absent any agreement such changes cannot be implemented.

The General Counsel argues that an individual local union has no authority to agree to a modification of the NMFA. The General Counsel contends that when the Respondent implemented a 10-percent trailer rental it modified a contractual term of the NMFA (art. 61, sec. 4), without submitting its proposal to Local 800 for meaningful discussion and without submitting any riders to any conference area committee for approval. Rather, it is argued, the Respondent dealt directly with employees by offering them changed leases with reduced trailer rentals with the option of accepting such lease or pulling a company trailer with the loss of all trailer rental compensation.

Although not alleged in the complaint, the General Counsel argues in the post-hearing brief that the unilateral cancellation of trailer leases in May 1980 violated Section 8(a)(5) of the Act, on the grounds that by practice the leasing of trailers had become a condition of employment, which required notification and bargaining prior to modification thereof. The General Counsel concedes that a temporary or *ad hoc* lease termination does not constitute a change of employment condition. Indeed the equipment leases provide for termination. The General Counsel argues that, although the Respondent had not announced a blanket cancellation of all trailer leases and/or institution of a blank 10-percent trailer policy, it had become clear since the events of May 1980, as it was not clear in November 1979, that the Respondent had embarked on a course of conduct designed to achieve a 10-percent trailer rental policy throughout its system.

The Respondent denies that any direct dealing with employees occurred in December 1979 or May 1980, and argues that all cancellations of leases in May 1980 were effectuated in accordance with the terms of the leases. The Respondent concedes in its brief that a unilateral reduction of the trailer rental without negotiation and agreement with the Union is conduct violative of the contract and "possibly the Act," but argues that all new trailer leases with reduced rental were effectuated with the agreement of Local 800, and thereby it satisfied its bargaining obligations.

The Respondent further argues that the Board ought to defer this matter to the grievance-arbitration procedure contained in the collective-bargaining agreement. The Respondent contends that "the real issue in this case revolves around the provisions of Article 55 of the agreement dealing with owner-operators and the leases under which they operate." It points out that the disposition of the grievances concerning the November 1979 lease cancellations resulted in final and binding decisions.

The General Counsel argues that that deferral of this matter to the grievance arbitration process is not appropriate because the Respondent's conduct constituted a serious unfair labor practice which runs to the Respondent's basic bargaining obligations and which undermines the status and authority of Local 800 and the Teamsters National Freight Industry Negotiating Committee.

Furthermore, the General Counsel argues that deferral is inappropriate because the violations alleged concern midterm modifications of clear and unambiguous provisions of the NMFA which requires no contract interpretation, and which also concerns direct dealing with employees constituting interference with basic statutory rights. With respect to the decisions of the western Pennsylvania joint area grievance committee regarding the November 1979 lease cancellations, the General Counsel points out that there has been no demonstration that the arbitrator considered the issue of an unfair labor practice; i.e., the issue before the arbitrator was limited to the cancellation of individual leases and did not encompass the broader issues involved herein.

The Deferral Issue

The Respondent contends that this matter should be referred to the grievance-arbitration procedures set forth in the NMFA and supplement, pursuant to the Board's Decision in *Collyer Insulated Wire, A Gulf and Western Systems Co.*, 192 NLRB 837 (1971), and *Spielberg Manufacturing Company*, 112 NLRB 1080 (1955). In *Roy Robinson, Inc., d/b/a Roy Robinson Chevrolet*, 228 NLRB 828, 831 (1977), the Board referred to the arbitration process as an issue involving an alleged violation of Section 8(a)(5) in the nature of a failure to bargain concerning a unilateral cessation of certain operations. The respondent therein asserted that the terms of the collective-bargaining agreement justified its conduct. The Board held that any doubts as to whether the issue was covered by the contractual arbitration clause should be resolved in favor of arbitration. Then Chairman Murphy in a concurring opinion stated that whether the respondent had a right under the contract to engage in unilateral action was "clearly one of contract interpretation which an arbitrator is peculiarly competent to resolve."

The Board subsequently has also held that where the alleged violation involves an alleged breach of the provisions of a collective-bargaining agreement of which the language is clear and unambiguous and no construction of the collective-bargaining agreement is relevant for evaluating the reasons advanced by the respondent for failure to comply with such provision, then deferral to arbitration is not appropriate. *Struthers Wells Corp.*, 245 NLRB 1170 (1979). Similarly, deferral to arbitration is inappropriate where the respondent's alleged conduct is indicative of a refusal to abide by the terms of the collective-bargaining agreement rather than of simply having a different interpretation of that agreement. *Precision Anodizing & Plating, Inc.*, 244 NLRB 846 (1979).[6]

The alleged midterm modification of the collective-bargaining agreement herein concerned a clear and unambiguous provision of the contract. There is no language in the contract that is susceptible to an interpretation that the Respondent had the authority to act unilaterally in changing the trailer rental. If the finding of an unfair labor practice herein were premised on a finding that the Respondent chose the wrong contractual mechanism to obtain a modification, or if it were premised solely on the failure of the Respondent to resort to a particular mechanism, an interpretation of the contract arguably would be relevant. However, the Respondent herein is alleged to have unilaterally changed the collective-bargaining agreement without recourse to the employees' designated exclusive-bargaining agent either by contractual means or by extra contractual joint bargaining. The General Counsel's argument that the Respondent should have utilized certain contractual mechanisms is therefore not one that need be resolved. It is not necessary to a remedial order to specify the specific means the Respondent should utilize to obtain the agreement of the designated exclusive-employee bargaining agent to the desired contract modification. It is only necessary to order that he do so in a lawful manner. Accordingly, there is no relevance here to the application of contractual expertise of an arbitrator. Moreover, the alleged violations herein involve conduct which is indicative of a disregard for the contract, and the collective-bargaining process with respect to a basic employment condition. Cf. *Oak Cliff-Golman Baking Company*, 207 NLRB 1063 (1973).

Additionally it is alleged that the Respondent's conduct, while simultaneously subverting the role of the employees' bargaining agent, also consisted of interference with employees' basic statutory rights. Cf. *Vesuvius Crucible Co.*, 252 NLRB 1272 (1980). The issue of direct dealing with employees is a serious issue and it is entwined with the basic issues in this case. The disposition of a grievance concerning lease terminations would not resolve a basic issue in this case; i.e., the alleged undermining of the employee's collective-bargaining agent by direct dealings with employees. A deferral to the grievance-arbitration procedure would result in a fragmentation of issues, and accordingly would be inappropriate. *The Proctor & Gamble Manufacturing Company*, 248 NLRB 953 (1980).

With respect to the deference suggested for disposition of the earlier grievances, the issues involved therein were more limited in scope than the issues involved herein. The issues raised by the instant complaint involve more than the right of the Employer to cancel several individual leases. The arbitrator therefore did not consider the same issues. Thus, there is no demonstration that the requirements of the *Spielberg* case were met. *U.S. Postal Service*, 245 NLRB 901 (1979). Accordingly, I conclude that it is not appropriate to defer this matter to the grievance arbitration process.

Conclusions

The Respondent asserts and the General Counsel concedes that the collective-bargaining agreement herein imposes no explicit obligation of the Respondent to lease all of its equipment from the owner-operators. The General Counsel concedes that the Respondent may very well have the right to unilaterally terminate individual leases pursuant to the terms of those leases, on an *ad hoc* basis. The General Counsel argues that once the Respondent has engaged in the general practice of leasing equipment from its owner-operators it has established by practice a condition of employment and cannot unilaterally without notice and bargaining with the Union, as a matter of policy, no longer lease any vehicles, i.e., trucks or trailers, from its drivers. However, the Respondent herein is not alleged in the complaint to have breached its bargaining obligations by unilaterally terminating all trailer leases. Rather, it is alleged to have unilaterally changed the trailer rental and thereby breached its bargaining obligation.

Section 8(a)(5) and (1) of the Act obliges an employer to notify and consult with the designated exclusive-bargaining agent concerning changes in wages, hours, and conditions of employment. *N.L.R.B.* v. *Benne Katz, Alfred Tinkel and Murray Katz, d/b/a Williamsburg Steel Products Company*, 369 U.S. 736 (1962). Upon notice of such proposed change, the employees' bargaining agent must act with due diligence in requesting bargaining,

[6] See also *Sun Harbor Manor*, 228 NLRB 945 (1977).

otherwise it may be deemed to have waived its right to bargaining. *The City Hospital of East Liverpool, Ohio*, 234 NLRB 58 (1978); *Citizens National Bank of Willmar*, 245 NLRB 389 (1979). The union's obligation arises upon actual notice regardless of whether it was received from a source other than direct communication from the employer. *Hartmann Luggage Company*, 173 NLRB 1254 (1968). A union may elect to waive its right to notice and bargaining by contractual agreement, *Bancroft-Whitney Co., Inc.*, 214 NLRB 57 (1974). A contractual waiver will not lightly be inferred but must be clearly demonstrated by the terms of the collective-bargaining agreement, and under certain circumstances from the history of negotiations: *Southern Florida Hotel & Motel Association, employer-members, The Estate of Alfred Kaskell d/b/a Carillon Hotel; The Estate of Alfred Kaskell d/b/a Doral Hotel and Country Club; The Estate of Alfred Kaskell d/b/a Doral Beach Hotel*, 245 NLRB 561 (1979); *Hilton Hotels Corporation d/b/a Statler Hilton Hotel*, 191 NLRB 283 (1971). Furthermore, contractual language which reserves to the employer the right to make unilateral changes with respect to certain areas such as work rules will be strictly construed and will not be interpreted to extend to other areas such as wages in the absence of specific evidence of such intent. *Southern Florida, Hotel-Motel Association, supra* (see also *Capitol Trucking, Inc.*, 246 NLRB 135 (1979)).

The amount of compensation paid to a driver by the carrier-employer for the use of the driver's equipment is a subject which affects the driver-employees' economic interest as vitally as the subject of the amount of their wages, and as such falls within the scope of obligatory collective bargaining. Cf. *Local 24, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO* v. *Oliver et al.*, 358 U.S. 283 (1959). The amount of trailer rental was subject to negotiations between the parties, and an agreement was reached as to a precise percentage of gross revenue. That agreement was memorialized in a written contract of which the terms are clear and unambiguous. It is of no matter that the respondent may not, by the explicit terms of the contract, be obliged to enter into equipment leases with all or any of its drivers. Once having done so, the respondent is obliged by that contract as to the agreed-upon compensation. The objective for negotiating the amount of rental compensation, as observed by the Supreme Court in the *Oliver* case, is to protect the drivers from a risk of erosion of their wages by the fixing of an inadequate compensation for the costs of operating their own equipment. Having entered into an equipment lease, the respondent is not free to unilaterally change the trailer rental without having changed a basic term and condition of employment as embodied in the collective-bargaining agreement. The respondent's only recourse if it desires to change that term of the contract is to obtain an agreement from the recognized, designated collective-bargaining agent, unless the contract itself empowers unilateral action. It is well-settled law that a modification of a clear and unambiguous term of contract of fixed duration, regardless of economic motivation or duration of modification, must be obtained pursuant to a positive affirmance by the employee's bargaining agent otherwise the requirements of Section 8(d) of the Act are not met and a violation of Section 8(a)(5) results. *C & S Industries, Inc.*, 158 NLRB 454, 456-457 (1966); *Oak Cliff-Golman Baking Company, supra; Sun Harbor Manor, supra; Fairfield Nursing Home*, 228 NLRB 1208 (1977); *Airport Limousine Service, Inc.*, 231 NLRB 932 (1977); *Keystone Steel & Wire, Division of Keystone Consolidated Industries, Inc.*, 237 NLRB 763 (1978); *Precision Anodizing & Plating, Inc., supra; Struthers Wells Corporation, supra.*

The trailer rental provision of the contract is without ambiguity and compliance therewith is forcefully stressed in the collective-bargaining agreement. The only ambiguity arguable herein is the means by which the Respondent could effectuate such a change under the various mechanisms delineated in the contract, if indeed any of those provisions were applicable: i.e., via a rider, a request for relief, or joint committee approval of a lease. Assuming that no such mechanism in the contract was applicable, either by contractual interpretation or past practice, there is no basis to argue that the contract by implication authorized unilateral action with respect to a modification of its terms. It does not follow that a contractual right to terminate an individual lease or even all leases gives rise to a right unilaterally to set new rental provisions at variance from the rates in the NMFA and its supplement.

The Respondent argues that it did indeed bargain with and obtain the agreement of Business Agent Wallace with respect to the May 1980 trailer lease rental reductions.

An employer is obliged to bargain solely with the employees' designated bargaining agent and may deal with no other. *Medo Photo Supply Corporation* v. *N.L.R.B.*, 321 U.S. 678 (1944). Furthermore, that obligation is not excused even if the employees themselves initiate direct dealings with the employer. *Kenneth B. McLean d/b/a Ken's Building Supplies*, 142 NLRB 235 (1963), enfd. 333 F.2d 84 (6th Cir. 1964). In a situation involving designated or Board-certified local unions where combined national-local agreements evolved from multiunit bargaining, the Board has held that an employer does not breach its bargaining obligations by dealing with the parent International Union rather than the local union concerning multiunit matters, *Radio Corporation of America*, 135 NLRB 980, 983 (1962). The Board there stated:

> Surely the Board is not such a prisoner of a narrow interpretation of its own findings concerning appropriateness of a separate bargaining unit that it cannot recognize a workable pattern of bargaining developed by the parties which, while giving due recognition to such separate units, also seeks to accommodate the interests of local and national bargaining.

The Board has found conduct violative of Section 8(a)(5) of the Act wherein an employer attempted to deal individually with local unions on matters which were within the province of national negotiations. *General Electric Company*, 150 NLRB 192, 193 (1964), enfd. 418 F.2d 736, 755 (2d Cir. 1969), cert. denied 397 U.S. 965 (1970).

However, where the International Union acquiesced in local bargaining, the Board has held that an employer's dealings with a local union is not violative of the Act. *Braeburn Alloy Steel Division, Continental Copper & Steel Industries, Inc.*, 202 NLRB 1127 (1973); *American Laundry Machinery Company*, 107 NLRB 1574, 1577 (1954). Accordingly, the Board looks to the realities of the bargaining relationship between the parties, as well as to the identity of the designated collective-bargaining agent. However, when an employer bargains with a union representative who has no real or apparent authority it breaches its obligation to deal exclusively with the employees' bargaining agent. *Spriggs Distributing Company*, 219 NIRB 1046 (1975).

In the instant case, the designated bargaining agent is not the individual local union, nor is it the International Union. The collective-bargaining agreement is not a local agreement. The units are not local units. The designated bargaining agent consists of all locals affiliated with the International Union. In practice these local unions have authorized a national committee as its agent to negotiate a national freight agreement. That national committee established subcommittees which in turn negotiated the NMFA and its supplements. A multiemployer/multiunion bargaining unit has been established. Under such an integrated, national scheme of relationships there is no basis to conclude that Business Agent Wallace as an individual or as agent for Local 800 was possessed of real or apparent authority to negotiate modifications to either the NMFA or to the *eastern conference area iron & steel rider*. The ability of an individual local union to negotiate modifications to a national contract runs contrary to the nature of the multiemployer/multiunion bargaining practice and would be counterproductive of the ultimate goal of such joint bargaining; i.e., industrywide labor relations stability.

There is also no basis on which to conclude that the designated bargaining agent acquiesced in conduct by Wallace which purportedly constituted negotiation and agreement.

Assuming, *arguendo*, that Wallace as agent for Local 800 was possessed of authority to negotiate and agree to a change in the trailer rental, I conclude that in fact no such agreement was reached. Wallace repeatedly and explicitly cited Dilley's proposed action as violative of the collective-bargaining agreement. At most, Wallace in effect indicated that Local 800 would take no action to prohibit its individual members from entering into a trailer lease at variance with the collective-bargaining agreement. Such tolerance was manifested to avoid economic detriment to the employee who would otherwise be required to accept an economically disadvantageous alternative. When Wallace told Dilley that he was acting under protest, he was not agreeing to a modification of the collective-bargaining agreement in general or with respect to Local 800 members employed by the Respondent, but rather he warned that Local 800 would continue to pursue Respondent's compliance with the terms of that agreement. Accordingly, I conclude that by implementing the amended trailer leases in May 1980, the Respondent breached its obligation to obtain agreement from the unit employees' designated bargaining agent in joint bargaining concerning a midterm modification of a term of the collective-bargaining agreement which affected a condition of employment and thereby failed to comply with the requirements of Section 8(d) of the Act, thus violating Section 8(a)(5) of the Act.

With respect to the General Counsel's argument (not alleged in the amended complaint) that the Respondent violated the Act by unilaterally terminating the equipment leases in May 1980, I conclude that the Respondent's course of action was well publicized and announced to the employees at the December meeting, i.e., that a selective termination of leases had occurred in November 1979, and that future cancellations would occur.[7] Grievances had occurred and were processed by the Union concerning the November cancellations. Thereafter, Wallace indicated that Local 800 had accepted the Respondent's right to terminate leases. He made no effort to respond to Dilley's letter notifying him of the May cancellations. No protest was made nor any demand to bargain was made concerning Respondent's decision to terminate the leases of the lesser productive owner-operators. Wallace's sole expression of concern was directed to the proposed alternative course of action.

Without deciding whether the Respondent's practice of entering into equipment leases had established the leasing of equipment as a term and condition of employment, I conclude that in any event an opportunity had existed to bargain over the termination of the May leases which opportunity was not utilized. Accordingly I do not conclude that the termination of the May 1980 leases, *per se*, constituted a violation of any bargaining obligation.

With respect to the allegation that the Respondent dealt directly with its employees in December 1979 by soliciting employees to agree to proposed changes in trailer leases, I conclude that the evidence does not support such allegation. The Respondent had terminated a group of leases in November 1979. In December it explained the reasons for its actions to the employees. No effort was made to solicit any opinion from the drivers as to either such action or as to any alternative course of action. I conclude that no direct dealing with employees occurred in December 1979.

There is no allegation that the Respondent solicited employees in June 1980 to enter into leases containing terms at variance with the collective-bargaining agreement. The evidence reveals that it was the employees who solicited such arrangement. However, as found above, the Respondent's acceptance of proposals from the employees constituted a breach of its obligation to bargain with and obtain the agreement of the designated bargaining agent before implementing changes in the collective-bargaining agreement. As I have credited Wallace's version of the conversations he had with Dilley, I do not conclude that he authorized individual employees to bargain with the Employer concerning a contractual

[7] The testimony of Wallace and Local 800 President Todd in *Jones Motor Co., Inc.*, Case 6-CA-13101, held on September 29 and 30, 1980, reveal that by early January 1980, Local 800 received reports from drivers as to the purported plan of several carriers including Spector to cancel equipment leases

modification. Furthermore, for the reasons stated above, Wallace was not possessed of any authority to agree to any changes on behalf of the designated bargaining agent, therefore he was possessed of no authority to authorize individual employees to engage in direct dealings with the Respondent. Accordingly, I conclude that by dealing with individual employees in June 1980 concerning proposed changes with respect to equipment lease provisions the Respondent bypassed the designated bargaining agent and thus violated Section 8(a)(5) and (1) of the Act.

Finally, there is no evidence to support the allegation in the complaint concerning the termination of/or refusal to assign work to employees.

CONCLUSIONS OF LAW

1. The Respondent, Spector Freight System, Viking Division, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Local 800 is a labor organization within the meaning of Section 2(5) of the Act, and together with other local unions affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, they have been designated and are the exclusive collective-bargaining representative of the employees in a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act, consisting of all employees covered in the multiemployer bargaining unit set forth in articles 2 and 3 of the National Master Freight Agreement employed by members of employer bargaining associations, a party thereto, or employers bound thereby including the Respondent.

3. The Respondent bypassed the designated exclusive-bargaining agent described above in paragraph 2 by dealing directly with its employees who are members of the multiemployer unit also described in paragraph 2 above in June 1980 by agreeing to changes with respect to equipment lease provisions different from the equipment lease provisions set forth in the National Master Freight Agreement and its supplement and has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

4. Commencing on or about June 1980, the Respondent without bargaining, and agreement, with the designated exclusive-bargaining agent and by failing to comply with its obligations under Section 8(d) of the Act, unilaterally implemented changed terms and conditions of employment with respect to equipment leases as set forth in the National Master Freight Agreement and has thus engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

5. The unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

In view of the foregoing findings of unfair labor practices, I recommend that the Respondent be ordered to cease and desist from said unfair labor practices and to post an appropriate notice, and to take certain affirmative action. I conclude that a *status quo ante* remedy is appropriate and necessary in this case, and I recommend that the Respondent be ordered to conform the owner-operator equipment leases that it had executed in June 1980 with the minimum equipment rental provisions as set forth in the National Master Freight Agreement and its supplement and to make whole its operators who suffered a loss of earnings as a result of the Respondent's unilateral action. Said backpay will be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest thereon to be computed in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977).[8]

In view of the absence of evidence that the Respondent has demonstrated a proclivity to engage in conduct violative of the Act, a broad remedial remedy as requested by the General Counsel is not warranted.

[Recommended Order omitted from publication.]

[8] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).